

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: David E. MCDYSAN et al.	
Application No.: 09/723,481	Group Art Unit: 2153
Filed: November 28, 2000	Examiner: Bates, K.
Attorney Docket: RIC00042 Client Docket: 09710_1232	

For: PROGRAMMABLE ACCESS DEVICE FOR A DISTRIBUTED NETWORK ACCESS
SYSTEM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request a pre-appeal brief review be made of the present application for at least the following clear errors.

- I. THE EXAMINER OVERLOOKS THE CLAIMED FEATURE OF “THE FORWARDING TABLE IS UTILIZED TO FORWARD PACKETS BETWEEN THE FIRST AND SECOND NETWORK INTERFACES.”**

The Examiner contends that *Albert et al.* (US 6,606,316) discloses, in Fig. 11, and at col. 28, lines 10-65, the steps taken by a forwarding agent upon receiving a packet. The packet is identified for any special services to be performed by using fixed or wildcard affinities. If a dispatch flag is set, the packet is dispatched by the forwarding agent to the forwarding address specified. However, *Albert et al.* is absolutely silent with respect to packets being forwarded

“**between first and second network interfaces**,” as claimed. While there would be a “network interface” between network 210 and the forwarding agent 231, for example, as shown in Fig. 2A, and there may be “interfaces” between forwarding agent 231 and service manager 241 or 242, and between forwarding agent 231 and servers 220, there is no indication that servers 220 and/or service managers 241 and 242 are in a different “**network**” from forwarding agent 231. Therefore, there is no “**second network interface**” in *Albert et al.*, as required by the present claims.

II. THE EXAMINER OVERLOOKS THE CLAIMED FEATURE OF “A CONTROL INTERFACE THROUGH WHICH SAID PACKET HEADER FILTER AND SAID FORWARDING TABLE ARE PROGRAMMED.”

The Examiner identifies col. 18, lines 23-41, of *Albert et al.* as teaching the claimed “control interface,” contending that “the service manager is connected with the forwarding agents through an interface that can send affinity updates to those forwarding agents. Those affinity updates are programmed to change the operation of the forwarding agents” (page 2 of the Advisory Action of October 30, 2007).

The cited portion of the reference is concerned with sending messages between the forwarding agents and the service managers and sending wildcard affinities by the service managers. At col. 17, lines 51-54, *Albert et al.* recites that “Actions defined for the affinities specify the service to be performed by the forwarding agent on behalf of the Manager.” Thus, the forwarding agent in *Albert et al.* is given some instruction as to what service is to be performed on the part of the service manager, but there is no indication that the service manager itself actually “programs” the forwarding agent and a packet header filter.

Further, the Examiner’s explanation would appear to indicate that the Examiner considers the service manager of *Albert et al.* to be the claimed “control interface.” The Examiner has

previously indicated (see the penultimate paragraph on page 2 of the Advisory Action of October 30, 2007) that the service manager of *Albert et al.* is considered to be the claimed “external processor.” However, the present claims, by reciting the “control interface” and the “external processor” as two different elements, make it clear that the control interface and the external processor are separate and distinct entities within the network access system (see, for example, by way of explanation, Figs. 2 and 3, where programmable access device (PAD) 40 is separate and distinct from external processor 42, with elements 40 and 42 both being within the network access system 31, while the control interface 104 is within PAD 40). That is, the claimed “external processor” is external to the PAD -- but included, along with the PAD, in the overall network access device. Thus, the service manager (241 or 242) of *Albert et al.* cannot be both the claimed “external processor” and the claimed “control interface.” The service manager of *Albert et al.* cannot be, at the same time, both within the PAD and external to it.

Accordingly, *Albert et al.* cannot anticipate independent claims 1 and 26 under 35 U.S.C. §102(c), and, since *Gai et al.* (US 6,167,445) and *Amara et al.* (US 6,674,743) fail to provide for these deficiencies in *Albert et al.*, the combination of *Albert et al.*, *Gai et al.*, and *Amara et al.* cannot make the subject matter of independent claim 50 obvious, within the meaning of under 35 U.S.C. §103.


III. CONCLUSION

For the foregoing reasons, the Appeal Brief Panel is respectfully requested to withdraw the rejection of the present application in light of these clear errors and allow the pending claims.

Respectfully Submitted,

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11/29/07
Date


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